IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 574 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRITLAL B SUTARIA

Versus

RESERVE BANK OF INDIA

Appearance:

MR SHALIN MEHTA for Petitioner

MR SB VAKIL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/10/1999

ORAL JUDGEMENT

#. The petitioner, an employee of the Reserve Bank of India, by this writ petition under Article 226 of the Constitution of India, is praying for quashing and setting aside of the order dated 4.1.86 of the Executive Director on the appeal of the petitioner filed against the order dated 21.4.84 of the competent authority under which the penalty of reduction of pay of one stage was imposed on him.

#. The petitioner was chargesheeted for five charges which are as under:

(i) The petitioner did not attend to the work of average daily balance properly and did not complete it. He did not also reply to Memos dated 21.11.80 and 26.12.80;

(ii) The petitioner did not attend the office duty assigned to him on 18th, 19th, 22nd, 24th and 25th August, 1980;

(iii) The petitioner on 31st July 1981, while on duty quarrelled with Shri P.K.Shah, Clerk, coin/notes examiner which also resulted in breakage of glass pane. He also refused to accept Memo dated 30th August, 1981 issued to him in that regard;

(iv) The petitioner entered the Manager's cabin without permission on 15.6.81 and used the telephone. While on enquiry, he also misbehaved with the Private Secretary to the Manager;

(v) The petitioner abstained from work without obtaining the prior permission for 18 days in various spells, during the period from 9th December, 1980 to 28th August, 1981.

#. On these charges, the inquiry officer conducted inquiry and submitted his report to the disciplinary authority. The inquiry officer reported that Charge No.1, 2 and 5 stand proved whereas the first part of charge No.3 was proved but second part thereof is not proved. So far the charge No.4 is concerned, the inquiry officer observed that no evidence was adduced and no inquiry was made in the light of the Manager's Memo dated 11th September 1981 issued to the petitioner and the matter was treated as closed.

#. The learned counsel for the petitioner raised threefold contentions challenging the order of the competent authority and that of the appellate authority. Firstly, it is contended that from mere reading of the charges levelled against the petitioner, it is difficult to accept that the petitioner has committed some misconduct. Secondly, it is contended that the finding recorded by the inquiry officer in the inquiry on the charges No.1, 2, 3 and 5 are perverse. Lastly, it is contended that looking to the nature of charges, the penalty of reduction of one incremental stage with future

effect is highly excessive to the guilt proved.

#. Mr.S.B.Vakil, learned counsel for the respondent, on the other hand contended that the inquiry officer has recorded the finding of fact after appreciation of evidence and this Court will not act as a Court of appeal. It has next been contended that in the disciplinary matters, strict rule of proving of guilt of the delinquent employee beyond reasonable doubt is not applicable as what it is applicable in the criminal trial. In such matters, the standard of proof is that of preponderance of probabilities. There are serious charges against the petitieonr and on proof of 4.5 charges, the competent authority has imposed penalty upon the petitioner and that is towards lower side. Moreover, the appellate authority has affirmed the judgment of the competent authority and no interference in the matter may be made by this Court. This Court can examine the procedural correctness of decision making process and will not it as an appellate authority on the finding of fact recorded by three authorities. It has next been contended that charges are very specific and clear and mere reading of the same certainly constitute misconduct. Replying to the last contention of the learned counsel for the petitioner, Mr.Vakil contended that for proved misconduct what penalty has to be imposed on a delinquent employee or officer is the sole concern and domain of the disciplinary authority and the appellate authority. This Court, sitting under Article 226 of the Constitution of India, has very very limited powers of judicial review in the matter of penalty to be imposed on the employee or officer and more so, to substitute its own penalty for the penalty given by the competent authority/ appellate authority. Only in case where this Court finds that the penalty imposed upon the delinquent employee or officer or employee for proved misconduct is shocking to judicial conscience then only in an appropriate case, the Court may interfere and remand the matter to the appellate authority or disciplinary authority for imposing appropriate penalty or in exceptional case, it may itself undertake the job to substitute its own penalty. In support of this contention, he made reference to the decision of the apex Court in the case of P.C.Chatterjee v. Union of India, reported in JT 1995(8) SC 65.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. From the reading of the chargesheet, which is on the record of this special civil application as annexure-A, I do not find any substance whatsoever in the first

contention of the learned counsel for the petitioner. The charges are very specific and clear and inaction or omission as stated therein of the delinquent employee, the petitioner herein, certainly constitute misconduct.

#. So far as the second contention is concerned, the learned counsel for the petitioner has taken the Court through the inquiry report as well as the order passed by disciplinary authority and appellate authority and after going through these documents, I do not find any perversity in the findings recorded on the charges found proved against the petitioner. Contrary to it, it is a case where the findings are duly supported by evidence and the same cannot be labelled as perverse findings. From the inquiry report I find that the evidence has properly been appreciated by the inquiry officer and this Court will not sit as an appellate Court over these findings. Otherwise also, the learned counsel for the petitioner, except to repeat that the findings are perverse, has failed to illustrate how the same are perverse. It is not the case where it can be said that the findings of the inquiry officer are based on `no evidence'. For illustration, it is to be mentioned that a part of charge No.1 in fact, has been admitted by petitioner as it is clearly borne out from page 39 of the special civil application, where it is observed that, "during the course of inquiry, the chargesheeted employee admitted to have received both the memoranda". However he has not produced any evidence to show that these two memoranda have been replied by him. He has come up with a defence that he replied to both the memoranda and replies were handed over to the Administration Section of D.A.D. but the petitioner could not recall name of the officer to whom replies were handed over by him. In the absence of any proof and looking to the fact that the onus to prove that replies were submitted by him to these two memoranda lies upon him, this part No.2 of charge No.1 has rightly been held to be proved by inquiry officer. The learned counsel for the petitioner has failed to show how this finding of fact recorded by the inquiry officer is perverse. The petitioner was posted in D.A.D. during September, 1980 onwards, but he did not attend the work of average daily balance properly and did not comply it. He was pointed out his these lapses, inaction or omission by memoranda referred in charge No.1. He was warned but still he has not improved and certainly it is a serious misconduct for which he has rightly been punished. If we go by this test sample of the finding of the inquiry officer, I am satisfied that the learned counsel for the petitioner has failed to make out any case of perversity in the findings recorded by

the inquiry officer.

#. Now I may advert to the last contention of the learned counsel for the petitioner. Charge No.1, 2 and 5 are proved fully whereas charge No.3 was proved partly. If we go by the charges levelled against the petitioner, these are serious charges. The petitioner has really acted in totally indifferent manner and in disregard of his obligation and duties which have been assigned to him. He has also remained absent from duty without prior giving leave sanction application. Looking to the seriousness of charges and ultimate punishment which has been given on proof of the same, it is a case where both, the competent authority and the appellate authority, have taken a very lenient view. The penalty of reduction of one grade increment with future effect in the facts of this case is certainly towards lower side. I find sufficient merits in the contention of Mr.S.B.Vakil, learned counsel for the respondent, that in the matter of awarding penalty for proved misconduct, this Court has very very limited power of judicial review. It is not the case where penalty of reduction of one grade increment with future effect imposed upon the petitioner is harsh or disproportionate to the guilt proved. This punishment cannot be said to be, by any stretch of imagination, shocking the conscience of this Court which warrants any of its interference therein. It is to be stated at the cost of repetition that in this case looking to the misconduct of petitioner, a bank employee, the punishment imposed upon him is towards lower side and only on this ground otherwise also, this grievance of the petitioner made through his advocate during the course of arguments cannot be accepted.

##. As a result of aforesaid discussion, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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[sunil]